IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2197 OF 2006
(Leave to file Appeal)

Shri.Sukumar Gopal Ghosh ...Applicant.

Versus

The State of Maharashtra
and Anr. ...Respondents.

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Mr.Sandip Karnik, i/b. Mr.A.H.H.Ponda, Adv. for the Applicant.
Ms.S.V.Gajre, APP, for State.

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CORAM : SMT.V.K.TAHILRAMANI,J.

DATED : 8th March, 2007.

P.C.:

1. Heard the learned Advocate for the Applicant-orig.complainant and the learned APP for the State.

2. Being aggrieved by the judgment and order of acquittal of respondent No.2-orig.accused dated 5.5.2006 passed by the learned M.M., 28th Court, Esplanade, Mumbai, this application for leave to appeal has been preferred. By the said judgment and order the learned Magistrate acquitted the

accused under Section 138 of N.I.Act.

3. I have perused the judgment and order of the learned Magistrate as well as the evidence in the said case.

4. One of the grounds for the learned Magistrate acquitting the respondent-accused is that the list of witnesses was not filed by the complainant alongwith the complaint nor was such list produced at any time before issuance of process. The complainant has been examined and he has admitted that he has not filed the list of witnesses. The complaint also does not contain any such list of witnesses. It is on this ground that the learned Magistrate acquitted the respondent No.2-accused.

5. The learned Advocate for the applicant has placed reliance on two decisions of this Court in the case of **Shashi Nair Vs. R.C.Mehta & Ors.**, **1982 (1) Bom.C.R. 358** and **Vashu Gokaldas Kukreja Vs. Meena Vashu Kukreja & Anr., III (2004) CCR 414**. However, these decisions are not on the

point as to whether process could be quashed if the list of witnesses was not filed at all by the complainant. In the present case the evidence has been led and thereafter the accused has been acquitted. Hence the above two decisions would be of no help to the applicant.

6. Looking to the evidence on record, it is seen that the list of witnesses has not been filed by the complainant at all i.e. not even prior to the issue of process nor at any point thereafter. Neither does the complaint contain any names of witnesses. Moreover, though the complainant has been examined, he has not furnished the name of any witness/s. On the other hand the complainant has categorically admitted in his evidence that he has not filed the list of witnesses. In this view of the matter, I am of the opinion that the view taken by the learned Magistrate is a reasonable and possible view.

7. It is well settled that if the view of acquittal could have been reasonably arrived at then mere circumstance that the lower Court would

have taken a different view, would be no ground to interfere. In this connection, there is no dearth of authorities but to eschew prolixity, I am referring to only two of them i.e. **AIR 1971 SC 66 Khedu Mohton and Ors. Vs. State of Bihar and C.Anthony Vs. K.G.Raghavan Nair, (2003) 1 SCC 1**. In the case of **C.Anthony**, the Supreme Court has observed that unless the findings of the trial Court are perverse or contrary to the material on record, the High Court cannot in Appeal substitute its findings, merely because another contrary opinion was possible on the basis of material on record.

8. As stated earlier, the view taken by the learned Magistrate is a reasonable and possible view hence, no interference is called for. Application is rejected.

(SMT.V.K.TAHILRAMANI,J.)